



PATENT
Docket No. 400-009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:) Group Art Unit: 3728
Andrea F. Bell) Examiner: Jimmy G. Foster
Entitled: "UTILITY APRON")
Filed: July 28, 1997)
Serial No.: 08/901,713)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO OFFICE ACTION NO. 7

In response to the Office Action of October 20, 2003 (Paper No. 36) (hereinafter "Office Action No. 7"), the period of response having been extended two months to March 22, 2004 by the attached petition and fee, please consider the following remarks.¹

**Rejection of Claims 1-26 Under
Section 103(a) (Lindsay and Anderson)**

Claim 1 patentably distinguishes over Lindsay (U.S. Patent No. 4,993,551) because Lindsay fails to disclose or suggest a utility apron in a combination of

¹ March 20, 2004 falls on a Saturday. Therefore, the deadline for response is extended to Monday, March 22, 2004.

elements which comprises a shell having lip portion for contacting the lip of the support device and an exterior surface for disposition at the exterior of the support device, and which further comprises a pocket disposed upon the exterior surface of the shell away from the longitudinal axis, the pocket including a resilient opening, the size of the opening being variable depending upon the extent to which the resilient opening is extended, as recited in claim 1.

As has been noted, Lindsay fails to disclose a utility apron wherein any of the pockets have a resilient opening, and wherein the size of the opening is variable depending upon the extent to which the resilient opening is extended, as recited in claim 1. The claimed apron solves problems implicit in the Lindsay design. The resiliency of the pockets of the claimed apron conveniently holds items such as cleaning products, canisters, bottles, and other items for storage and organization. The resiliency of the pockets of the claimed invention fulfills a long-felt need in the art by making it easier for the user's hand to fit inside of the pocket for placement of items into the pockets, by significantly reducing the susceptibility of the pockets to ripping, etc.

The combination using Anderson (U.S Patent No. 5,209,384) is improper because Anderson is directed to a backpack for storing tools, and thus constitutes non-analogous art. Backpacks are not within the field of the invention or the Applicant's field of endeavor, nor are they reasonably pertinent to such field. One of ordinary skill in the art, seeking to improve upon utility aprons, would not have turned to the field of backpacks to find solutions. Backpacks are not designed or

intended for use on a support device, such as a bucket, having an interior, an exterior, an opening, and a lip at the opening.

Moreover, neither Anderson nor Lindsay provides the legally necessary suggestion or motivation to extend or otherwise apply their teachings to one another. Nor does Office Action No. 7 identify a motivation or suggestion to combine them. Anderson provides no teaching or suggestion to apply its backpack disclosure to utility aprons. It fails even to mention such aprons. Nor does Lindsay provide any suggestion to look to or otherwise rely on carrying bag arts.

Anderson is no different than Baumgartner (U.S. Patent No. 3,678,977) and Yoo (U.S. Patent No. 4,993,551) cited in the previous Office Actions. Both Baumgartner and Yoo disclose bags with pockets/compartments for holding items. Although Baumgartner and Yoo both teach the use of a resilient opening pocket, the Board of Patent Appeals and Interferences was unable to “discern any teaching, suggestion or motivation therein which would have been obvious at the time the invention was made to a person of ordinary skill in the art to have modified Lindsay’s tool holder to include a resilient opening pocket.” Ex parte Bell at p. 6. Similarly, there is no teaching, suggestion or motivation in Anderson that would have been obvious at the time the invention was made to a person of ordinary skill in the art to have modified Lindsay’s tool holder to include a resilient opening pocket.

With regard to the claims pertaining to the sizes of the openings, and the references in the Office Action No. 7 to *In re Rose*, 105 USPQ 237, 240 and *In re Yount*, 80 USPQ 141, Applicant reiterates the statements made in the Response to Office Action Nos. 2 and 3, e.g., that these cases are specific to their facts and do not provide blanket prohibitions of patentability where size is a distinguishing feature. The Court of Appeals for the Federal Circuit has made amply clear in numerous report decisions that claimed inventions are to be viewed as a whole. To the extent size is a feature that serves to distinguish a claimed invention viewing the claim as a whole, and as here, where that feature provides an advantage not disclosed or suggested in the prior art, patentability may not be precluded based on some overriding proposition that size alone cannot afford a ground for patentability.

Declarations of George Millican Jr., Gary Cohen, and Andrea F. Bell

In regards to the declarations of Mr. Millican, Mr. Cohen and Ms. Bell, Office Action No. 7 makes the same points that were discussed in previous office communications such as Office Action No. 6 (dated March 6, 2002) and the Examiner's Answer. Office Action No. 7 has not addressed Applicant's responsive arguments concerning these declarations. Applicant stands by her arguments made in the Appeal Brief and incorporates these arguments by reference. These declarations support the position that the invention would not have been obvious to persons of ordinary skill in the art at the time the invention was made by demonstrating, for example, long-felt need, unexpected results and commercial success.

**Rejection of Claims 27-31 Under
Section 103(a) (Lindsay, Anderson and Baumgartner)**

The Board of Patent Appeals and Interferences stated that it was impermissible to combine the teaching of Lindsay and Baumgartner because there was no teaching, suggestion or motivation therein which would have been obvious at the time the invention was made to a person of ordinary skill in the art to have modified Lindsay's tool holder to include a resilient opening pocket. Ex parte Bell at p. 6. For the same reasons, Baumgartner cannot now be combined with Lindsay and Anderson. A person of ordinary skill in the art would not have been led to modify Lindsay's tool holder to include a pleated pocket. The only suggestion comes from impermissible hindsight knowledge derived from Applicant's own disclosure.

Conclusion

In conclusion, Applicant respectfully submits that claims 1-31 as pending patentably distinguish over the cited and applied references, and are in condition for allowance. Reconsideration of the application is requested in view of the remarks set forth above.

A Petition and check to cover the extension fee is enclosed. If this fee is deficient, or if there are any other fees due in connection with the prosecution of this application, please charge the fees to our Deposit Account No. 501324.

Dated: March 22, 2004

Respectfully submitted,



Sarah L. Malcolm
Reg. No. 53,259

CERTIFICATE OF EXPRESS MAILING

Express Mail Label No. EV 450227290 US

Date of Deposit March 22, 2004

I hereby certify that this Response to Office Action No. 7 is being deposited with the U.S. Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. § 1.10 on the date indicated above and is addressed Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



Cassandra A. Bennett